

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 289 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME TAX

Versus

GUJARAT CARBON LTD

Appearance:

MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

Date of decision: 23/04/99

ORAL JUDGEMENT (Per R.Balia, J)

At the instance of Commissioner of Income tax. Baroda, the Income Tax Appellate Tribunal Ahmedabad Bench 'A' has referred the following question of law arising out of its order dated December 1983 in ITA No. 419/Ahd/83 relating to assessment years 1979-80.

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in

coming to the conclusion that the interest of Rs.19,791/- received by the assessee on the deposit which was out of share application money was not liable to be taxed in the hands of the assessee?".

2. The questions require consideration whether the interest received on deposits made out of share application money by the assessee is not taxable as a capital receipt or is a revenue receipt liable to be taxed. The assessee's contention is that all the expenses incurred for raising capital are capital expenditure. Necessarily any amount which incidently comes on deposit of share application which remain with the company until applications are dealt with and shares are allotted is capital receipt as part of share application receipts. The answer to the question referred to us has been answered in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. Vs. C.I.T., reported in 227 ITR 1997 by the Supreme Court. The Court held as under:-

"Interest income is always of a revenue nature, unless it is received as damages or compensation. It cannot be said that amount accrued or received as interest on share application money is an amount received by the assessee by way of damages or compensation."

Therefore the exigibility of interest to tax must be answered in the affirmative that is to say in favour of revenue and against the assessee.

Accordingly, we answer the question referred to us in the negative i.e. in favour of the revenue and against the assessee. There shall be no orders as to costs.

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